

Mary Kay Malloy
Defendant Pro Se
527 Furlough Road
Conrad, Mt. 59425

MONTANA NINTH JUDICIAL COURT, PONDERA COUNTY

MARVIN and KATHY KAPTEIN

Plaintiffs,

vs.

MARY KAY MALLOY
Defendant,
Pro Se

Cause No: DV-06-58

**AFFIDAVIT OF DEFENDANT
MARY KAY MALLOY IN
SUPPORT OF
DISQUALIFICATION OF
JUDGE FOR CAUSE**

FILED

NOV 14 2007

STATE OF MONTANA)
:SS
COUNTY OF PONDERA)

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

COMES NOW MARY KAY MALLOY, and having first been duly sworn
and upon her oath does state as follows:

1. I am the Defendant in the above entitled proceedings; and
2. Defendant has good cause of action pursuant to MONTANA CODES
ANNOTATED TITLE 3. JUDICIARY, COURTS: CHAPTER 1. COURTS
AND JUDICIAL OFFICERS GENERALLY Part 8 Disqualification and

Substitution of Judges Supreme Court Rule. 3-1-805 Disqualification for cause.

3. The Defendant alleges that the presiding Judge in this matter the Honorable E. Wayne Phillips is in the opinion of the Defendant exhibiting personal bias or prejudice toward the Defendant.
4. Judge Phillips through his actions, by filing a complaint with The Commission on Unauthorized Practice of the Supreme Court of the State of Montana, wherein he alleges that the Defendant's Agent, Mr. Terry M. York, Attorney-in-Fact, by virtue of a granted Power of Attorney in accordance with MONTANA CODES ANNOTATED TITLE 72. ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS CHAPTER 31. MISCELLANEOUS PROVISIONS RELATING TO FIDUCIARIES Part 2. Statutory Form Power of Attorney Act. 72-31-201. Statutory form of power of attorney. (1) 72-31-222. Durable Power of Attorney 72-31-223. Construction of powers generally. (1)(2)(3) (4)(5)(6)(7)(8)(9)(10). 72-31-232. Construction of power relating to claims and litigation. (1)(2)(3)(4)(5)(6)(7)(8). Alleges that the Defendants' appointed Power of Attorney, Agent, Attorney-in-Fact is practicing law in violation of §37-61-201, MCA. by stating in his complaint "Mr. York has represented to the Court that he is Ms. Malloy's Attorney-in-Fact and is apparently preparing documents for her".
5. Judge Phillips by his action has influenced the Defendant in that she now believes that she cannot receive a fair, and unbiased, unprejudicial decision from Judge Phillips.
6. Judge Phillips' complaint against my appointed Power of Attorney (Terry M. York) is an attempt to deny the Defendant due process

and equal protection under the law, in-so-far that it is the Defendants' decision and hers alone to grant a Power of Attorney to another to act in her behalf in all matters as set forth in the Defendants' Power of Attorney executed the 6th day of September 2002.

7. Judge Phillips is further showing bias and prejudice against the Defendant by granting the Plaintiffs' Counsel preference, based on factors other than merit, to wit on 13 September 2007 a Hearing On Motions was set to be heard at 3:00pm at the Toole County Courthouse in Shelby, Montana via video conference from Lewistown, Montana. Plaintiff and Defendant was notified of such by Certificate of Service dated the 27th day of August, 2007 by the Pondera County Clerk of Court.

The Defendant appeared and was accompanied by Terry M. York, Agent, Attorney-in-Fact, Power of Attorney for the Defendant. Neither the Plaintiffs' nor the Plaintiffs' Counsel Mr. Robert Pfennings presented themselves at the appropriate place and time. The Clerk of Court after a 30 minute delay contacted Mr. Pfennings at his office, where he stated "he had neglected to calendar the scheduled September 13, 2007 Hearing on his calendar". Judge Phillips entered a "sua sponte" Order Resetting Motions Hearing. Defendant filed a Motion Objecting To Continuance Of Hearing / And Motion for Summary Judgment by Default. Arguing that Plaintiffs' Counsel failure to appear did not come under the standard of For Good Cause Appearing cited by Judge Phillips' Order Resetting Motions Hearing filed 17 September 2007.

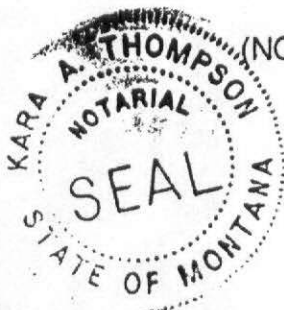
Further your Affiant sayeth not.

DATED this 9th day of November 2007.

Mary Kay Malloy
Mary Kay Malloy

STATE OF MONTANA)
 :SS
County of Pondera)

SUBSCRIBED AND SWORN to before me this 9th day of November, 2007



(NOTARIAL SEAL)

[Signature]
Notary Public for the State of Montana
Residing at Conrad, Montana
My Commission expires 5/1/2010

CERTIFICATE OF COUNSEL

In accordance with **3-1-805 MCA Disqualification for Cause.(1)(b).**

I Mary Kay Malloy the Defendant in Cause Number DV-06-58 and appearing Pro Se hereby state that the Affidavit as submitted has been made in good faith.

DATED this 9th day of November, 2007.

Mary Kay Malloy
Mary Kay Malloy
Pro Se